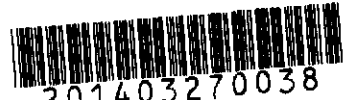


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Skagit County



Skagit County Auditor
3/27/2014 Page

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\$78.00

AFTER RECORDING RETURN TO:

Donald W. Jordan, Esq.
Porter, Wright, Morris & Arthur LLP
41 South High Street
Columbus, OH 43215

CHICAGO TITLE
620021170-M

(Space above this line for Recorder's use)

ACCOMMODATION RECORDING

**DEED OF TRUST
MODIFICATION AGREEMENT**

Chicago Title has placed this document for recording as a customer courtesy and accepts no liability for its accuracy or validity

Name of Grantor:

SeaWend, Ltd., dba SeaWend Ltd., L.L.C.,
an Ohio limited liability company

Name of Grantee (Beneficiary):

The Huntington National Bank, a national banking association

Name of Trustee:

Chicago Title Insurance Company

Abbreviated Legal Description:

"Tract C" per Volume 14 of Plats, Pages 126-127

Assessor's Tax Parcel ID Number:

4532-000-003-0006

Recording Information for

Deed of Trust:

Instrument No. 200304160107

**DEED OF TRUST
MODIFICATION AGREEMENT**

THIS DEED OF TRUST MODIFICATION AGREEMENT (this "Agreement") is made as of October 4, 2013, by and between **SEAWEND LTD.**, dba SeaWend Ltd., L.L.C., an Ohio limited liability company ("Grantor") and **THE HUNTINGTON NATIONAL BANK**, a national banking association ("Bank").

Recitals

A. Grantor and its affiliates (collectively, the "Companies") are indebted to Bank as evidenced by: (i) a Fourth Amended and Restated Loan Agreement, dated October 4, 2013, by and between the Companies and Bank, which supersedes Amended and Restated Loan Agreements, dated as of December 28, 2012, dated as of March 19, 2010, and dated as of November 19, 2008 (as further amended and/or amended and restated, collectively, the "Loan Agreement"); (ii) a Term Note, dated December 28, 2012, in the principal amount of \$20,000,000.00 (the "2012 Term Note"); (iii) a Revolving Note, dated December 28, 2012, in the maximum principal amount of \$3,000,000.00 (the "Revolving Note"); and (iv) a Term Note, dated October 4, 2013, in the principal amount of \$15,000,000.00 (the "Acquisition Term Note"). The 2012 Term Note is substitute evidence of earlier term indebtedness, and the Revolving Note is substitute evidence of earlier revolving credit, secured by the Deed of Trust described below. The Acquisition Term Note is evidence of new term indebtedness incurred by the Companies to finance acquisition of additional Wendy's Old-Fashioned Hamburgers restaurants. The 2012 Term Note, the Revolving Note and the Acquisition Term Note are referred to herein, collectively, as the "Notes".

B. As security for repayment of the indebtedness, Grantor previously executed and delivered to Chicago Title Insurance Company, as Trustee, a certain Deed of Trust, Assignment of Rents and Security Agreement, recorded as referenced on page 1, Recorder's Office of Skagit County, Washington. The Deed of Trust has been modified in an Amendatory Agreement, recorded as Instrument No. 200610030148, in a Deed of Trust Modification Agreement, recorded as Instrument No. 200904200163, in a Deed of Trust Modification Agreement, recorded as Instrument No. 201105020061 and in a Deed of Trust Modification Agreement recorded as Instrument No. 201308070050 (collectively, the "Deed of Trust"), encumbering Grantor's leasehold estate in the real property legally described on page 1.

C. Cedar Enterprises, Inc., Grantor's affiliate, and Bank previously entered into a Rate Management Agreement in order to provide interest rate risk protection for the 2012 Term Note and have entered into an additional Rate Management Agreement in order to provide interest rate risk protection for the Acquisition Term Note (collectively, "Rate Management Agreements").



D. Grantor and Bank have agreed to modify the Deed of Trust in order to secure the new term indebtedness and obligations under the related Rate Management Agreement and to reference the Notes, Loan Agreement and Rate Management Agreements that now evidence the aggregate secured indebtedness.

Agreement

1. **Recitals.** The foregoing recitals are accurate and are made a part of this Agreement.

2. **Term Note.** All references in the Deed of Trust to "Term Note" or "Term Notes" hereafter shall mean the 2012 Term Note and the Acquisition Term Note described in the first recital above.

3. **Revolving Note.** All references in the Deed of Trust to "Revolving Note" or "Revolving Notes" hereafter shall mean the Revolving Note described in the first recital above.

4. **Loan Agreement.** All references in the Deed of Trust to "Loan Agreement" hereafter shall mean the Loan Agreement described in the first recital above.

5. **Rate Management Agreements.** All references in the Deed of Trust to "Rate Management Agreement" hereafter shall mean the Rate Management Agreements described in the third recital above.

6. **Secured Obligations.** The grant and the description of the indebtedness and obligations, payment and performance of which are secured by the Deed of Trust, are amended and restated in their entireties as follows:

"NOW, THEREFORE, IN CONSIDERATION OF THE INDEBTEDNESS HEREIN RECITED AND IN ORDER TO SECURE TO BANK repayment of the Indebtedness (as defined below) and performance of the other obligations of Grantor to Bank and also for and in consideration of the sum of Ten Dollars (\$10.00) paid by Bank at or before the execution and delivery of these presents, the receipt thereof and legal sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell, convey and assign to Trustee, its successors and assigns, **IN TRUST, WITH POWER OF SALE**, Grantor's leasehold estate in the following real property:

(See abbreviated legal description on page 1.)

TOGETHER WITH all estate, right, title and interest of Grantor in and to the Premises arising upon any acquisition of fee title to the Premises, or any part thereof, during the term of the Notes;

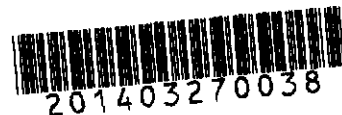


TOGETHER with Grantor's leasehold estate in all improvements constructed on the Premises and in all fixtures, machinery, equipment, engines, boilers and incinerators, now existing or hereafter arising and now or hereafter located in, on, or about the Premises, and now or hereafter incorporated into the improvements, including without limitation fixtures and equipment for supplying or distributing heating, cooling, electricity, gas, water, sewage, air and light, and all fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, water heaters, water closets, sinks, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, unattached rugs, carpet and other attached floor coverings, antennas, trees and plants; and

TOGETHER with all ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, restaurant equipment, furniture, furnishings, computer equipment, office equipment, and goods of every nature whatsoever, now owned or hereafter acquired by Grantor, located at the Premises and/or used in the operation of the Restaurant; and Grantor's rights under equipment leases; and all accounts arising from all rents and revenues, whether now due, past due, or to become due by virtue of any sublease, license or other agreement for the occupancy or use of all or any part of the Premises; and all permits, licenses and approvals necessary to operate the Restaurant; and Grantor's rights in the plans and specifications for the improvements; and all accounts receivable, contract rights and all other intangible personal property owned by Grantor and arising from or used in connection with Grantor's business at the Premises, including without limitation Grantor's rights in that certain Unit Franchise Agreement entered into with Wendy's for operation of the Restaurant; and all other property now owned or hereafter acquired by Grantor and used in or about the Premises; all of which, including replacements therefor and proceeds thereof, being hereby deemed a part of the property encumbered by this Instrument and, together with the Lease, collectively, the 'Property';"

"This Instrument is made and intended to secure payment and performance of:

(i) the Loan Agreement, as it may be further amended or amended and restated; (ii) the Notes, together with any and all renewals, extensions or modifications thereof, and substitutions therefor, either in whole or in part; (iii) all advances, if any, made by Bank pursuant to the terms of this Instrument or the other Loan Documents (hereinafter defined); (iv) all expenses incident to the collection of the Indebtedness; (v) all other duties and obligations of Grantor and the other Companies under the Loan Agreement, the Notes, the Rate Management Agreements, this Instrument, the other Deeds of Trust and Mortgages, and the related loan documents (collectively, the 'Loan Documents'); (vi) all obligations incurred by Cedar or Grantor and/or any of the other Companies under the Rate Management Agreements or under any other agreement between Cedar, Grantor and/or the other Companies and Bank or any affiliate of Bank, now existing or hereafter entered into, which provides for an interest rate, currency, equity, credit or commodity swap, currency, option, any combination of, or option with respect to, any of the foregoing or any similar transactions, for the purpose of hedging the Companies' exposure to fluctuations in interest



rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (including any such or similar agreement or transaction entered into by Bank or any affiliate thereof in connection with any other agreement or transaction between Bank and Grantor, Cedar and/or the other Companies); (vii) reimbursement obligations to Bank for any letters of credit now outstanding or hereafter issued for the account of Grantor, Cedar and/or any of the other Companies; and (viii) all other indebtedness now or hereafter owing by Grantor and the other Companies to Bank, however or whenever created, incurred, arising or evidenced, whether direct or indirect, primary or secondary, joint or several, absolute or contingent, and whether due or to become due, and whether from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred, and any and all renewals, extensions or modifications of such indebtedness, and substitutions for such indebtedness, either in whole or in part; all such indebtedness of Grantor and the other Companies which this Instrument is given to secure, collectively, the 'Indebtedness'."

7. **Maturity Date.** The maturity date of the latest maturing indebtedness is January 1, 2020.

8. **Loan Advances.** Paragraph 33 of the Deed of Trust is amended and restated as follows:

"This Instrument shall secure unpaid balances of loan advances which Bank is obligated to make to Grantor and/or to the Companies, after this Instrument is delivered to the Recorder for record, pursuant to the provisions of the Notes and/or the Loan Agreement, whether made after a reduction to a zero or other balance. The maximum amount of the unpaid balance of loan advances funded under the Notes or incurred under the Loan Agreement and/or the Rate Management Agreements, in the aggregate and exclusive of interest thereon and exclusive of advances under paragraph 8 to protect the Property or the lien of this Instrument, which may be outstanding at any time is Thirty-Eight Million Six Hundred Eighty-Eight Thousand Three Hundred Twenty-Six and no/100 Dollars (\$38,688,326.00)."

9. **Effect.** Except as specifically modified in this Agreement, the Deed of Trust continues in full force and effect as originally written. Grantor covenants to timely pay and perform its obligations to Bank and warrants to Bank that it has no claims, offsets or defenses to payment of the indebtedness and performance of the other obligations evidenced by the Notes and the Loan Agreement and the Rate Management Agreements.

10. **Non-Agricultural.** The Property which is the subject matter of the Deed of Trust being modified hereunder is not used principally for agricultural purposes.

WASHINGTON NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.



IN WITNESS WHEREOF, Grantor and Bank have executed this Agreement.

GRANTOR:

SEAWEND, LTD., dba SeaWend Ltd., L.L.C.,
an Ohio limited liability company

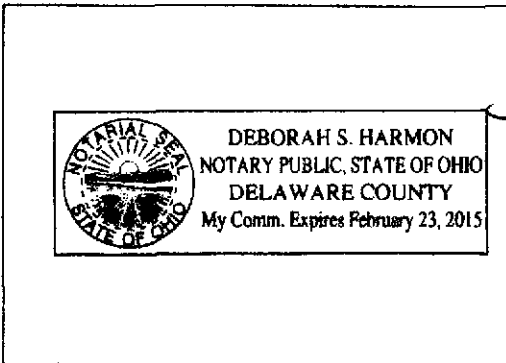
By: 
James W. Evans, President

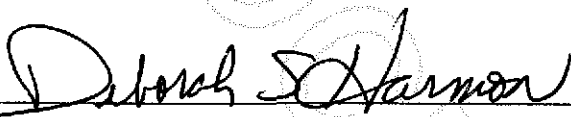
STATE OF OHIO,
COUNTY OF FRANKLIN, SS:

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

On this 12th day of February, 2014, before me personally appeared James W. Evans, known to me to be the President of SeaWend, Ltd., dba SeaWend Ltd., L.L.C., the limited liability company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.





(Use this space for notarial seal stamp.)



BANK:

THE HUNTINGTON NATIONAL BANK

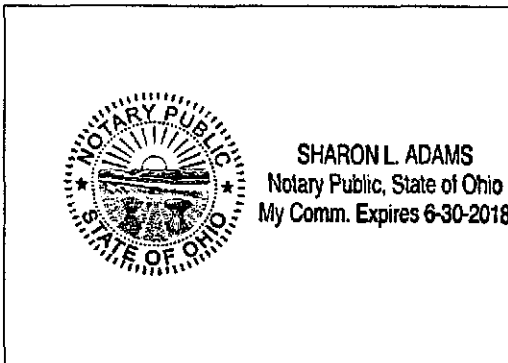
By: [Signature]
Name: John M. Luehmann
Title: Senior Vice President

STATE OF OHIO,
COUNTY OF FRANKLIN, SS:

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

On this 4th day of March, 2014, before me personally appeared John M. Luehmann, known to me to be the Senior Vice President of The Huntington National Bank, the national banking association that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said association, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.



[Signature]

(Use this space for notarial seal stamp.)

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Skagit County Auditor
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